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ATTORNEYS FOR POWELL VALLEY HEALTH CARE, INC.
AND HEALTHTECH MANAGEMENT SERVICES, INC.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF WYOMING**

POWELL VALLEY HEALTH CARE, INC.,)	
)	
Plaintiff,)	
)	
v.)	
)	
HEALTHTECH MANAGEMENT SERVICES, INC.,)	Civil Action No. 12-CV-0042-F
)	
Defendant/Crossclaimant,)	
)	
v.)	
)	
PAUL CARDWELL and MICHAEL J. PLAKE,)	MOTION TO STRIKE
)	MICHAEL PLAKE’S
)	RESPONSE TO HEALTHTECH
)	MANAGEMENT SERVICES,
Defendants/Cross Defendants.)	INC.’S MOTION FOR
)	SUMMARY JUDGMENT

Plaintiff Powell Valley Health Care, Inc. (PVHC) and Crossclaimant HealthTech
Management Services, Inc. (HealthTech), through their counsel, respectfully submit this Motion

to Strike Michael Plake's Response to HealthTech Management Services, Inc.'s Motion for Summary Judgment (Dkt. 85) and, in support, state as follows:

1. HealthTech filed its motion for summary judgment, in which PVHC joined, on April 29, 2013 (Dkt. 75).
2. U.S.D.C.L.R. 7.1(b)(2)(A) establishes the deadline for responding to a dispositive motion:

Each party opposing the motion shall, with **fourteen (14)** days after the service of said motion, serve upon all parties a written brief containing a short, concise statement of the argument and authorities in opposition to the motion, together with proposed findings of fact and conclusions of law...Failure of a responding party to serve a response within the **fourteen (14)** day time limit may be deemed by the Court in its discretion as a confession of the motion.

3. Pursuant to U.S.D.C.L.R. 5.3(b), the 14-day period for responding to the summary judgment motion was extended by three days.
4. Thus, Plake's response was due May 16, 2013.
5. Plake, however, did not submit a response until May 22, 2013—six days after the deadline—and offered no reason for the late filing. His response is untimely and should therefore be stricken. “By failing to file a response within the time specified by the local rule, the nonmoving party waives the right to respond or to controvert the facts asserted in the summary judgment motion. The court should accept as true all material facts asserted and

properly supported in the summary judgment motion.” *See, e.g., Reed v. Nellcor Puritan Bennett*, 312 F.3d 1190, 1195 (10th Cir. 2002).¹

6. In light of Plake’s (and Cardwell’s) failure to respond by the May 16 deadline, the Court, PVHC and HealthTech determined a hearing was unnecessary. Thus, the Court vacated the hearing set for May 21. Given these circumstances, it would be prejudicial to allow Plake to file a response at this stage in the proceedings, particularly if HealthTech is not given an opportunity to reply or otherwise be heard on these issues.

For the reasons stated herein, Plaintiff Powell Valley Health Care, Inc. and Cross-Claimant HealthTech Management Services, Inc. respectfully request that the Court strike Michael Plake’s Response to HealthTech’s Motion for Summary Judgment. A proposed order is attached for the Court’s convenience.

DATED: May 23, 2013.

/s/ Joanna R. Vilos

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¹ Plake’s response does not controvert the facts asserted in HealthTech’s summary judgment brief but instead appears to concede liability. The response, however, does purport to offer a defense as to the damages PVHC and HealthTech should be awarded. As these arguments are late-filed, they should not be considered by the Court.

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CERTIFICATE OF SERVICE

I hereby certify that on May 23, 2013, I served a true and correct copy of the foregoing by CM/ECF addressed to the following:

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